

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

SIERRA CLUB, et al.,

Plaintiffs,

and

UNITED STATES OF AMERICA,

Intervenor,

v.

MASTEC NORTH AMERICA, a private
corporation, et al.,

Defendants.

No. 03-1697-HO (LEAD)
(Consolidated with Case No. 06-6071-HO)

CONSENT DECREE

I. RECITALS

1. On December 8, 2003, the Sierra Club , Coos County Coalition, Klamath-Siskiyou Wildlands Project (collectively, "Sierra Club") commenced an action against MasTec North America, Inc., Clark Besack ("Besack"), and others entitled *Sierra Club, Coos County Coalition, and Klamath-Siskiyou Wildlands Project v. MasTec North America, Coos County, John Griffith, Nikki Whitty, Gordon Ross, and Clark Besack*, in the United States District Court

for the District of Oregon, Case No. 03-1697-TC ("First Action"), alleging that MasTec North America, Inc. and Besack discharged pollutants into waters of the United States in Coos and Douglas Counties, Oregon, without authorization by a permit issued by the United States Army Corps of Engineers ("Corps"), and contrary to an Oregon Department of Environmental Quality ("ODEQ") storm water permit, in violation of section 301(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1311(a).

2. On October 14, 2004, the Court dismissed the claims against defendants Coos County, John Griffith, Nikki Whitty, and Gordon Ross.

3. On March 30, 2006, the United States commenced an action against MasTec, Inc. and Coos County entitled *United States of America v. Mastec, Inc. and Coos County*, in the United States District Court for the District of Oregon, Case No. 06-6071-HO ("Second Action"), alleging that MasTec, Inc. discharged pollutants into waters of the United States in Coos and Douglas Counties, Oregon without a permit and in violation of a permit issued by the Corps, in violation of CWA section 301(a), 33 U.S.C. § 1311(a).

4. On August 16, 2006, this Court ordered consolidation of the First and Second Actions, and reassigned the First Action from Judge Coffin to Judge Hogan, changing the First Action's letter designation from "TC" to "HO."

5. On April 5, 2007, the United States filed an intervenor complaint against MasTec North America, Inc. in the First Action alleging the same CWA violations the United States alleged in the Second Action.

6. On August 31, 2007, the Parties lodged a Joint Proposed Pretrial Order ("PTO"). In the PTO, the Parties consolidated their claims and contentions from the First and Second Actions, in the process amending the pleadings in the First and Second Actions in some particulars. The gravamen of the First and Second Actions remained, however, as described in paragraphs 1 and 3 herein.

7. As detailed in the PTO, the Sierra Club and the United States seek civil penalties from MasTec, Inc. and MasTec North America, Inc. (collectively, "MasTec") and Besack pursuant to CWA section 309(d), 33 U.S.C. § 1319(d).

8. This Consent Decree is intended to constitute a complete and final settlement of all of Sierra Club's claims in the First Action, as well as the United States' "frac-out" contention in the First Action and Second Action (as described in section IV.70(b) of the PTO).

9. The Parties agree that settlement of Sierra Club's claims in the First Action and of the United States' "frac-out" contention in the First Action and Second Action is in the public interest and that entry of this Consent Decree is the most appropriate means of settling this matter.

10. The Court finds that this Consent Decree is a reasonable and fair settlement, and that this Consent Decree adequately protects the public interest in accordance with the CWA and all other applicable federal law.

THEREFORE, before the taking of any testimony upon the pleadings, without further adjudication of any issue of law or fact, and upon consent of the Parties, it is ORDERED, ADJUDGED, and DECREED as follows:

II. JURISDICTION AND VENUE

11. This Court has jurisdiction over the subject matter of the First and Second Actions and over the Parties pursuant to CWA sections 309(b) and 505(a), 33 U.S.C. §§ 1319(b) and 1365(a), and 28 U.S.C. §§ 1331, 1345, and 1355.

12. Venue is proper in the United States District Court for the District of Oregon pursuant to CWA section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c), because MasTec and Besack conduct business in this District, the subject property is in this District, and the claims alleged herein arose in this District.

III. APPLICABILITY

13. This Consent Decree shall apply to and be binding upon the Parties, their officers, directors, agents, employees, and servants, and their successors and assigns and any person, firm, association, or corporation who is, or will be, acting in concert or participation with any Party whether or not such person has notice of this Consent Decree. In any action to enforce this Consent Decree, no party shall raise as a defense the failure of any of its officers, directors, agents, employees, successor, or assigns, or any person, firm, or corporation acting in concert or participation with a party, to take any actions necessary to comply with the provisions hereof.

IV. SCOPE OF CONSENT DECREE

14. This Consent Decree shall constitute a complete and final settlement of Sierra Club's (as collectively defined above) claims in the First Action, as well as the United States' "frac-out" contention in the First Action and Second Action (as described in section IV.70(b) of the PTO).

15. It is the Parties' express purpose in entering this Consent Decree to further the objectives set forth in CWA section 101, 33 U.S.C. § 1251.

16. The obligations of MasTec North America, Inc. and MasTec, Inc. in this Consent Decree are joint and several.

17. This Consent Decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to section 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, or any other law. Nothing in this Consent Decree shall limit the ability of the Corps to issue, modify, suspend, revoke, or deny any individual permit or any nationwide or regional general permit, nor shall this Consent Decree limit the Environmental Protection Agency's ability to exercise its authority pursuant to CWA section 404(c), 33 U.S.C. § 1344(c).

18. This Consent Decree in no way affects the rights of the United States as against any person not a party to this Consent Decree.

19. The Parties reserve any and all legal and equitable remedies available to enforce the provisions of this Consent Decree and applicable law.

20. Nothing in this Consent Decree shall constitute an admission of fact or law by any party. The Parties understand and agree that this Consent Decree is not an admission of liability for any claims asserted in the First or Second Actions and that, except for dismissal of the "frac out" contention, entry of this Consent Decree is without prejudice to the claims asserted by the United States in the First Action or the Second Action.

V. SPECIFIC PROVISIONS

21. MasTec Payments to Sierra Club. Within 30 calendar days after entry of this Consent Decree, MasTec shall pay to "Client Trust Account of Landye Bennett Blumstein LLP" \$225,000.00 for the Sierra Club's (as collectively defined above) attorney fees.

22. MasTec Payment to United States. Within 30 calendar days after entry of this Consent Decree, MasTec shall pay a civil penalty to the United States of \$50,000.00. MasTec shall make this payment by FedWire Electronic Funds Transfer to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number (2004-R00866), and the Corps and the DOJ case number (90-5-1-1-1-17191). Payment shall be made in accordance with instructions provided to MasTec by the Financial Litigation Unit of the United States Attorney's Office for the District of Oregon. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. This civil penalty payment is not a tax deductible expenditure for purposes of federal law.

23. Off-Site Mitigation

(a) Within 30 calendar days after entry of this Consent Decree, MasTec shall pay \$100,000 to Ducks Unlimited, Inc. ("DU") for the purpose of implementing water quality and habitat improvement projects pursuant to the Site Specific Agreement between DU and MasTec, attached hereto as Attachment A and shall pay \$100,000 to the Oregon Department of Fish & Wildlife ("ODFW") for the purpose of implementing habitat improvement projects pursuant to the Environmental Project Funding Agreement between ODFW and MasTec, attached hereto as Attachment B.

(b) If MasTec receives timely reports from DU and ODFW pursuant to Section A.11 of the Agreement between MasTec and DU and Section 5 of the Agreement between MasTec and ODFW, MasTec shall transmit a copy of the reports to the United States within 15 days of when they are due to MasTec. If MasTec does not receive these reports in a timely manner, MasTec shall make a formal request for the report to DU or ODFW within 15 days of when the reports were due to MasTec. If MasTec has not received a copy of the report within those following 15 days, then MasTec shall pursue appropriate legal recourse against the party failing to submit the report.

(c) If within 15 days of when DU and ODFW are obligated to pay funds into the District Court registry pursuant to Section A.12 of the Agreement between MasTec and DU and pursuant to Section 6 of the Agreement between MasTec and ODFW, DU or ODFW has failed to make such payment, then MasTec shall make a formal request to DU or ODFW that it make such payment. If no payment has been received within the following 15 days, then MasTec shall pursue appropriate legal recourse against the party failing to make the payment. If any such funds are paid into the registry of the Court, the parties shall identify pursuant to the procedures in Section VII of this Consent Decree an alternative water quality project for which such funds shall be spent.

(d) If at any time it appears that ODFW or DU has defaulted on any of its obligations under its agreement with MasTec, MasTec shall notify the United States of such default. If requested by the United States, MasTec shall take appropriate measures, including appropriate legal recourse, against the defaulting party to remedy the default.

24. Releases and Covenants Not to Sue. The Sierra Club, MasTec and Besack, release and covenant not to sue or take further action against each other for any and all CWA claims prior to the date of the entry of this Consent Decree or any alleged CWA violations raised in the First Action, or for any CWA or other environmental violations that could have or should have been raised in the First Action. The United States releases and covenants not to sue or take further action against MasTec or Besack for any "frac-out" contention raised in the First or Second Action (as described in section IV.70(b) of the PTO).

VI. COSTS OF SUIT

25. Except as set forth in Paragraph 21 above, each party to this Consent Decree shall bear its own costs and attorney fees in connection with the First Action and with any "frac-out" contention in the Second Action, and in connection with the negotiation, drafting, and execution of this Consent Decree.

VII. DISPUTE RESOLUTION

26. Any dispute that arises with respect to the meaning or requirements of this Consent Decree shall be, in the first instance, the subject of informal negotiations between the United States and MasTec. The period for informal negotiations shall not extend beyond thirty (30) days beginning with written notice by one party to the other affected party or parties that a dispute exists, unless agreed to in writing by those parties. If a dispute between the United States and MasTec cannot be resolved by informal negotiations, then the position advanced by the United States shall be considered binding unless, within fourteen (14) days after the end of the informal negotiations period, MasTec files a motion with the Court seeking resolution of the

dispute. The motion shall set forth the nature of the dispute and a proposal for its resolution. The United States shall have thirty (30) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, MasTec shall bear the burden of proving by a preponderance of the evidence that the United States' position is not in accordance with the objectives of this Consent Decree and the CWA, and that MasTec's position will achieve compliance with the terms and conditions of this Consent Decree and the CWA.

27. If the United States believes that a dispute is not a good faith dispute, or that a delay would pose or increase a threat of harm to the public or the environment, it may move the Court for a resolution of the dispute prior to the expiration of the thirty (30) day period for informal negotiations. MasTec shall have fourteen (14) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, MasTec shall bear the burden of proving by a preponderance of the evidence that the United States' position is not in accordance with the objectives of this Consent Decree, and that MasTec's position will achieve compliance with the terms and conditions of this Consent Decree and the CWA.

28. The filing of a motion asking the Court to resolve a dispute shall not extend or postpone any obligation of MasTec under this Consent Decree, except as provided in Paragraph 35 below regarding payment of stipulated penalties.

VIII. FORCE MAJEURE

29. MasTec shall perform the actions required under this Decree within the time limits set forth or approved herein, unless the performance is prevented or delayed solely by events which constitute a Force Majeure event. A Force Majeure event is defined as any event arising from causes beyond the control of MasTec, including its employees, agents, consultants and contractors, which could not be overcome by due diligence and which delays or prevents the performance of an action required by this Consent Decree within the specified time period. A Force Majeure event does not include, inter alia, increased costs of performance, changed

economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstances arising out of the sale, lease or other transfer or conveyance of title or ownership or possession of a site, or failure to obtain federal, state or local permits.

30. If MasTec believes that a Force Majeure event has affected MasTec's ability to perform any action required under this Consent Decree, MasTec shall notify the United States in writing within seven (7) calendar days after the event at the addresses listed in Section X. Such notice shall include a discussion of the following:

- A. what action has been affected;
- B. the specific cause(s) of the delay;
- C. the length or estimated duration of the delay; and
- D. any measures taken or planned by the Defendants to prevent or minimize the delay and a schedule for the implementation of such measures.

MasTec may also provide to the United States any additional information that it deems appropriate to support its conclusion that a Force Majeure event has affected its ability to perform an action required under this Consent Decree. Failure to provide timely and complete notification to the United States shall constitute a waiver of any claim of Force Majeure as to the event in question.

31. If the United States determines that the conditions constitute a Force Majeure event, then the deadline for the affected action shall be extended by the amount of time of the delay caused by the Force Majeure event. MasTec shall coordinate with the United States to determine when to begin or resume the operations that had been affected by any Force Majeure event.

32. If the parties are unable to agree whether the conditions constitute a Force Majeure event, or whether the length of time for fulfilling the provision of the Consent Decree at

issue should be extended, any party may seek a resolution of the dispute under the procedures in Section VII of this Consent Decree.

33. MasTec shall bear the burden of proving (1) that the noncompliance at issue was caused by circumstances entirely beyond the control of MasTec and any entity controlled by MasTec, including its contractors and consultants; (2) that MasTec or any entity controlled by Defendants could not have foreseen and prevented such noncompliance; and (3) the number of days of noncompliance that were caused by such circumstances.

IX. STIPULATED PENALTIES

34. After entry of this Consent Decree, if MasTec fails to timely fulfill the requirements of Paragraph 23 of this Consent Decree, the MasTec shall pay a stipulated penalty to the United States for each violation of each requirement of this Consent Decree as follows:

- A. For Day 1 up to and including Day
30 of non-compliance\$1000.00 per day
- B. For Day 31 up to and including 60
of non-compliance\$2,000.00 per day
- C. For Day 61 and beyond of non-
compliance\$3,000.00 per day

Such payments shall be made without demand by the United States on or before the last day of the month following the month in which the stipulated penalty accrued.

35. Any disputes concerning the amount of stipulated penalties, or the underlying violation that gives rise to the stipulated penalties, that cannot be resolved by the parties pursuant to the Dispute Resolution provisions in Section VII and/or the Force Majeure provisions in Section VIII shall be resolved upon motion to this Court as provided in Paragraphs 26 and 27.

36. The filing of a motion requesting that the Court resolve a dispute shall stay MasTec's obligation to pay any stipulated penalties with respect to the disputed matter pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall continue

to accrue from the first day of any failure or refusal to comply with any term or condition of this Consent Decree. In the event that MasTec does not prevail on the disputed issue, stipulated penalties shall be paid by MasTec as provided in this Section.

37. To the extent MasTec demonstrates to the Court that a delay or other noncompliance was due to a Force Majeure event (as defined in Paragraph 29 above) or otherwise prevail on the disputed issue, the Court shall excuse the stipulated penalties for that delay or noncompliance.

38. In the event that a stipulated penalty payment is applicable and not made on time, interest will be charged in accordance with the statutory judgment interest rate provided for in 28 U.S.C. § 1961. The interest shall be computed daily from the time the payment is due until the date the payment is made. The interest shall also be compounded annually.

39. Defendants shall make any payment of a stipulated penalty by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number (2004-R00866), and the Corps and the DOJ case number (90-5-1-1-1-17191). Payment shall be made in accordance with instructions provided to the Defendants by the Financial Litigation Unit of the United States Attorney's Office for the District of Oregon. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Further, upon payment of any stipulated penalties, Defendants shall provide written notice, at the addresses specified in Section X of this Decree.

X. NOTICES

40. All notices and communications required under this Consent Decree shall be made to the parties through each of the following persons and addresses:

A. TO THE CORPS:

Misty Latcu, Assistant District Counsel
US Army Corps of Engineers
Office of Counsel
P.O. Box 2946
Portland, Oregon 97208-2946

B. TO THE UNITED STATES DEPARTMENT OF JUSTICE

Section Chief
Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986

C. TO MASTEC:

Albert de Cardenas, Esq.
General Counsel
MasTec
800 Douglas Road, 12th Floor
Coral Gables, FL 33134

XI. PUBLIC COMMENT

41. The Parties acknowledge that after the lodging and before the entry of this Consent Decree, final approval by the United States is subject to the requirements of 28 C.F.R. § 50.7, which provides for public notice and comment. The United States reserves the right to withhold or withdraw its consent to the entry of this Consent Decree if the comments received disclose facts which lead the United States to conclude that the proposed judgment is inappropriate, improper, or inadequate. The Sierra Club, MasTec, and Besack agree not to withdraw from, oppose entry of, or challenge any provision of this Consent Decree unless the United States has notified them in writing that it no longer supports entry of the Consent Decree.

XII. CONTINUING JURISDICTION OF THE COURT

42. This Court shall retain jurisdiction over this action in order to enforce or modify the Consent Decree consistent with applicable law or to resolve all disputes arising hereunder as may be necessary or appropriate for construction or execution of this Consent Decree. During the pendency of the Consent Decree, any party may apply to the Court for any relief necessary to construe and effectuate the Consent Decree.

XIII. MODIFICATION

43. Upon its entry by the Court, this Consent Decree shall have the force and effect of a final judgment. Any modification of this Consent Decree shall be in writing, and shall not take effect unless signed by all Parties and approved by the Court.

XIV. ENTIRE AGREEMENT

44. The Parties intend that this Consent Decree be complete and not subject to any claims of mistake of fact or law by any party. This Consent Decree constitutes the full and complete integration of the Parties' agreement. There are no promises, statements, covenants, representations, or warranties, expressed or implied, oral or written, about the subject matter of this Consent Decree that are not contained herein. This Consent Decree may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on the Parties, notwithstanding that all Parties are not signatories to the same counterpart. The Parties further agree that any pdf or facsimile copy of a Party's signature is valid and binding to the same extent as an original signature.

XV. SIGNATORIES

45. The Parties' undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this Consent Decree.

XVI. EFFECTIVE DATE

46. The Effective Date of this Consent Decree shall be the date upon which the Consent Decree is entered by the Court.

SO ORDERED this _____ day of _____ 2008.

The Honorable Michael R. Hogan
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree.

Sierra Club

Signature: _____
Print Name: _____
Title: _____
Dated: _____

Coos County Coalition

Signature: _____
Print Name: _____
Title: _____
Dated: _____

Klamath-Siskiyou Wildlands Project

Signature: _____
Print Name: _____
Title: _____
Dated: _____

United States of America

Signature: Kent E. Hanson
Print Name: Kent E. Hanson
Title: Trial Attorney
Dated: August 19, 2008

MasTec, Inc.

Signature: _____
Print Name: _____
Title: _____
Dated: _____

MasTec North America, Inc.

Signature: _____
Print Name: _____
Title: _____
Dated: _____

Clark Besack

Signature: _____
Print Name: _____
Dated: _____

XVI. EFFECTIVE DATE

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SO ORDERED this _____ day of _____ 2008.

The Honorable Michael R. Hogan
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree.

Sierra Club

Signature: _____
Print Name: _____
Title: _____
Dated: _____

Coos County Coalition

Signature: _____
Print Name: _____
Title: _____
Dated: _____

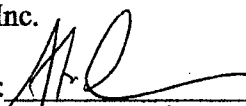
Klamath-Siskiyou Wildlands Project

Signature: _____
Print Name: _____
Title: _____
Dated: _____

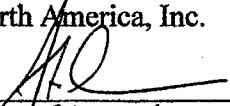
United States of America

Signature: _____
Print Name: _____
Title: _____
Dated: _____

MasTec, Inc.

Signature: 
Print Name: Alberto I. de Cardenas
Title: VP & General Counsel
Dated: 7/22/08

MasTec North America, Inc.

Signature: 
Print Name: Alberto I. de Cardenas
Title: VP & General Counsel
Dated: 7/22/08

Clark Besack

Signature: _____
Print Name: _____
Dated: _____

XVI. EFFECTIVE DATE

46. The Effective Date of this Consent Decree shall be the date upon which the Consent Decree is entered by the Court.

SO ORDERED this _____ day of _____ 2008.

The Honorable Michael R. Hogan
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree.

Sierra Club

Signature: _____
Print Name: _____
Title: _____
Dated: _____

Coos County Coalition

Signature: _____
Print Name: _____
Title: _____
Dated: _____


Klamath-Siskiyou Wildlands Project

Signature: _____
Print Name: _____
Title: _____
Dated: _____

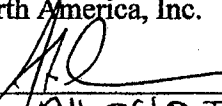
United States of America

Signature: _____
Print Name: _____
Title: _____
Dated: _____

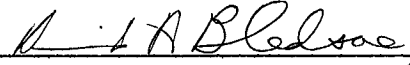
MasTec, Inc.

Signature: 
Print Name: Alberto I. de Cardenas
Title: EVP & General Counsel
Dated: 7/22/08

MasTec North America, Inc.

Signature: 
Print Name: Alberto I. de Cardenas
Title: EVP & General Counsel
Dated: 7/22/08

Clark Besack

Signature: 
Print Name: DAVID A. BLEDSOE, ON BEHALF OF CLARK BESACK AND
Dated: 8-18-08 WITH HIS AUTHORIZATION.
ON BEHALF OF CLARK BESACK.

THE UNDERSIGNED PARTIES enter into this Consent Decree.

Sierra Club

Signature: Jill Workman
Print Name: Jill Workman
Title: Oregon Chapter Chair
Dated: July 11, 2008

Klamath-Siskiyou Wildlands Project

Signature: _____
Print Name: _____
Title: _____
Dated: _____

MasTec, Inc.

Signature: _____
Print Name: _____
Title: _____
Dated: _____

Clark Besack

Signature: _____
Print Name: _____
Dated: _____

Coos County Coalition

Signature: _____
Print Name: _____
Title: _____
Dated: _____

United States of America

Signature: _____
Print Name: _____
Title: _____
Dated: _____

MasTec North America, Inc.

Signature: _____
Print Name: _____
Title: _____
Dated: _____

THE UNDERSIGNED PARTIES enter into this Consent Decree.

Sierra Club

Signature: _____
Print Name: _____
Title: _____
Dated: _____

Coos County Coalition

Signature: Larry E. Hughes
Print Name: Larry E. Hughes
Title: Vice President
Dated: 7/12/08

Klamath-Siskiyou Wildlands Project

Signature: _____
Print Name: _____
Title: _____
Dated: _____

United States of America

Signature: _____
Print Name: _____
Title: _____
Dated: _____

MasTec, Inc.

Signature: _____
Print Name: _____
Title: _____
Dated: _____

MasTec North America, Inc.

Signature: _____
Print Name: _____
Title: _____
Dated: _____

Clark Besack

Signature: _____
Print Name: _____
Dated: _____

THE UNDERSIGNED PARTIES enter into this Consent Decree.


Sierra Club

Signature: _____
Print Name: _____
Title: _____
Dated: _____

Coos County Coalition

Signature: _____
Print Name: _____
Title: _____
Dated: _____

Klamath-Siskiyou Wildlands Project

Signature: 
Print Name: Joseph Vaile
Title: Campaign Director
Dated: 7/15/08

United States of America

Signature: _____
Print Name: _____
Title: _____
Dated: _____

MasTec, Inc.

Signature: _____
Print Name: _____
Title: _____
Dated: _____

MasTec North America, Inc.

Signature: _____
Print Name: _____
Title: _____
Dated: _____

Clark Besack

Signature: _____
Print Name: _____
Dated: _____

ENVIRONMENTAL PROJECT FUNDING AGREEMENT

This Agreement is effective this 9th day of July, 2008, between the Oregon Department of Fish & Wildlife ("ODFW") and MasTec Inc. and MasTec North America, Inc. (collectively, "MasTec"):

RECITALS

WHEREAS, ODFW is interested in accepting Environmental Project funds for the purposes of supporting habitat acquisition and restoring priority habitats for salmonids in the Upper Coquille River watershed;

WHEREAS, ODFW has the capacity to manage these Environmental Project funds for these purposes;

WHEREAS, ODFW believes the Environmental Project funds will help leverage state or federal matching funds to aid in restoring and protecting salmon spawning and rearing habitat;

WHEREAS, MasTec has entered into this agreement pursuant to a consent decree with Sierra Club, Coos County Coalition, Klamath-Siskiyou Wildlands Project and the United States, in *Sierra Club v. MasTec North America*, No. 03-1697-HO (D. Or.) and a consolidated case, that calls for MasTec to provide Environmental Project funds to ODFW for habitat acquisition and restoration purposes;

NOW, THEREFORE, in consideration of the terms and conditions listed below, ODFW and MasTec agree as follows:

AGREEMENT

1. MasTec shall provide Environmental Project funding to ODFW in the amount of One Hundred Thousand dollars (\$100,000), through cash contribution, within thirty days of the signing of this Agreement;
2. ODFW shall accept the One Hundred Thousand dollars (\$100,000) in Environmental Project funds for the sole purposes of acquiring and restoring priority habitats for salmonids in the Upper Coquille River watershed;
3. ODFW shall use all these Environmental Project funds for these purposes within two years of the signing of this Agreement.
4. ODFW shall indemnify, hold harmless and defend MasTec from any liability, claims or legal actions of any kind that may be brought against MasTec that are related in any way to the habitat acquisition and restoration activities that are the subject of this Agreement.

5. Within one month of termination of this Agreement, ODFW shall provide MasTec with a written report of the uses made of funds provided by MasTec.
6. In the event that ODFW does not complete the work on the Project funded by MasTec within two years of the effective date of this Agreement, then within one month of the end of the two-year period ODFW shall pay any remaining funds received from MasTec into the registry of the United States District Court for the District of Oregon in *Sierra Club v. MasTec North America*, No. 03-1697-HO, with notice to all parties to that action.
6. If ODFW fails to timely comply with the requirements of this Agreement and MasTec, after notice, pursues legal recourse against ODFW pursuant to Paragraph 23 of the Consent Decree, then ODDW shall pay MasTec for any penalties, attorneys fees and costs incurred by MasTec as a result of ODFW's failure to timely comply.

IN WITNESS WHEREOF, the parties hereto have executed the Agreement as of the date and year first written above.

MASTEC NORTH AMERICA, INC. AND
MASTEC, INC.

By: 
Albert de Cardenas, General Counsel

July 22, 2008

Address: 800 Douglas Road, 12th Floor
Coral Gables, Florida 33134

OREGON DEPT. OF FISH & WILDLIFE

By: 
Thomas A. Ruddiman

July 9, 2008

Address: 3406 Cherry Avenue NE
Salem, OR 97303



SITE SPECIFIC AGREEMENT
MasTec North America, Inc.
MasTec Inc.

PROJECT NO: US-OR-23-2
PROJECT NAME: Philpot Ranch Restoration

This Agreement is effective this ____ day of _____, 2008 between Ducks Unlimited, Inc. (hereinafter "DU") and MasTec Inc./MasTec North America, Inc. (hereinafter "Cooperator").

WHEREAS, DU and the Cooperator have entered into this Agreement to help facilitate work on the Philpot Ranch Restoration project (hereinafter "Site") to benefit migratory waterfowl and other natural resources as described in the Project Proposal attached as Exhibit A of this Agreement (hereinafter "Project"), and

WHEREAS, Cooperator has entered into this Agreement pursuant to the requirements of a Consent Decree entered by the Court in *Sierra Club v. MasTec North America*, No 03-1697-HO (D. Or.) and a consolidated case ("Consent Decree").

NOW, THEREFORE, in consideration of the above premises and other terms and conditions listed herein, DU and the Cooperator agree as follows:

A. DU AGREES TO:

1. Construct, or cause to be constructed, the Project, subject to the terms and conditions of this Agreement, in substantial compliance with the Site development plans and specifications developed pursuant to Section A. 3. of this Agreement.
2. Commence the construction of the Project in 2009. Should construction of the Project not commence during 2009 for reasons beyond the control of the parties including, but not limited to, the failure to timely obtain required permits, agreements, leases, approvals, and access rights necessary for the development of the Project, the parties will commence the construction of the Project in a mutually acceptable future year. The parties recognize the construction of the Project cannot be accomplished unless all required permits are granted.
3. Obtain the topographical, soils, and hydrological data required to design the Project; prepare Site development plans and specifications for the Project; and submit same to Cooperator for review and mutual approval.

4. Prepare all Project bid specifications, accept or reject all contract bids, and be solely responsible for making any contract changes, additions, or deletions as the work progresses. The prime contractor shall be required to provide performance and payment bonds and carry casualty and liability insurance. The contracts shall provide that the contractor acknowledges that the Cooperator is not a party and will assert no claims against the Cooperator in any disputes with subcontractors, material men, or DU.
5. Provide Project alignment and grade staking, and construction management services.
6. Provide funding in cash and in-kind services for the development of the Project in an amount of zero Dollars (\$0.00) or zero percent (0%) of the total project cost, whichever is less and pending availability.
7. Obtain all required permits, agreements, leases, approvals, and access rights necessary for the development of the Project.
8. Routinely inspect the Site when any construction is in progress, maintain a written record of the construction activity.
9. Reseed all exposed and disturbed soils following Project construction, and thereafter provide routine inspection, operation, rehabilitation, and maintenance necessary to maintain the continuing viability and functioning of the Project throughout the term of this Agreement.
10. Indemnify, hold harmless and defend Cooperator from any liability, claims or legal actions of any kind that may be brought against Cooperator that are related in any way to the Project.
11. That within one month of termination of Agreement, provide Cooperator with a written report of the uses made of funds provided by Cooperator.
12. That in the event that DU does not complete the work on the Project funded by Cooperator within two years of the effective date of this Agreement, then within one month of the end of the two-year period DU shall pay any remaining funds received from Cooperator into the registry of the United States District Court for the District of Oregon in *Sierra Club v. MasTec North America*, No. 03-1697-HO, with notice to all parties to that action.
13. That if DU fails to timely comply with the requirements of this Agreement and Cooperator, after notice, pursues legal recourse against DU pursuant to Paragraph 23 of the Consent Decree, then DU shall pay Cooperator for any penalties, attorneys fees and costs incurred by Cooperator as a result of DU's failure to timely comply.

B. COOPERATOR AGREES TO:

1. Provide funding, through cash contribution, for the development of the Project in the amount of One Hundred Thousand and no/100 dollars (\$100,000.00). Cooperator shall pay such funds to DU within 15 days of the District Court's entry of the Consent Decree

between Cooperator and the Sierra Club, Coos County Coalition, Klamath-Siskiyou Wildlands Project, and the United States.

C. DU AND COOPERATOR AGREE:

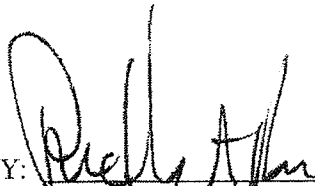
1. That there shall be no publicity related to Cooperator pertaining to the Site or the Project.
2. To recognize outside contributors who might provide significant funding to help underwrite the Project's cost or who otherwise are mutually deemed to deserve special recognition; this recognition can include signs, plaques, and/or cairns on the Site. The principal costs of such recognition shall be borne by the party initiating the recognition.
3. That this Agreement shall not be construed as binding either party to expend in any one fiscal year any sum in excess of authorized appropriations administratively allocated for the purpose of this Agreement or donated funds designated for this Project, or to involve either party in any contract or other obligation for further expenditure of money in excess of such appropriations or allocations.
4. To mutually consider the possibility of funding any extraordinary Project repairs that might be required. DU appoints Charles Lobdell as its Project Officer, but may change its Project Officer at any time by providing Cooperator with the name of its new Project Officer.
5. That this Agreement shall become effective upon the date first listed above and thereafter it will continue in force until all funds contributed by Cooperator have been expended on the Project pursuant to this Agreement. All work on the Project funded by Cooperator shall be completed within two (2) years of the effective date of this Agreement.
6. That either party may terminate this Agreement by providing thirty (30) days written notice thereof to the other party if all or any portion of the Site is taken by any governmental agency by means of eminent domain, or pursuant to any compelling reasons of public health, safety or welfare, or if DU abandons the Project or fails to manage it according to the terms of this Agreement. If any funds contributed by Cooperator and not spent by DU at the time of termination of this Agreement shall be paid into the registry of the United States District Court for the District of Oregon in *Sierra Club v. MasTec North America*, No. 03-1697-HO, the parties to the Consent Decree shall identify pursuant to the procedures in Section VII of the Consent Decree an alternative water quality project for which such funds shall be spent.
7. That either party (the "Indemnifying Party") shall indemnify and save harmless the other party to this Agreement (the "Indemnified Party") from any and all actions, claims, accounts, demands, losses, injuries, and expenses, including attorney's fees and court costs, that may arise from the Indemnifying Party's performance or lack thereof of its obligations under this Agreement.
8. To the following additional special conditions: None.

IN WITNESS WHEREOF, the parties hereto have executed the Agreement as of this date and year first written above.

MASTEC NORTH AMERICA, INC.
MASTEC, INC.

DUCKS UNLIMITED, INC.

BY: _____
Albert de Cardenas Date
General Counsel
Address: 800 Douglas Road, 12th Floor
Coral Gables, Florida 33134

BY:  7/22/08
Rudolph A. Rosen Date
Director

MASTEC NORTH AMERICA, INC.

DUCKS UNLIMITED, INC.

MasTec Inc.

BY: 

Albert de Cardenas

General Counsel

Address: 800 Douglas Road, 12th Floor
Coral Gables, Florida 33134

Date

7/22/08

BY: _____

Rudolph A. Rosen

Director

Date



EXHIBIT A PROJECT PROPOSAL

Project Number: US-OR-23-2

Project Name: Philpot Ranch Restoration

Project Description : The proposed project site lies within the Bandon Marsh National Wildlife Refuge (NWR). One goal of the Refuge System is to conserve and restore, where appropriate, critical ecosystems and ecological processes characteristic of those ecosystems. Estuaries and associated tidal wetlands comprise one such critical ecosystem, and tidal wetlands are considered essential habitat for many marine and anadromous fish and migratory waterfowl and shorebirds. The loss of tidal wetlands, primarily through dike construction and subsequent draining, has been identified as a major factor contributing to the decline of fishery resources and overall estuarine productivity.

The proposed project will restore approximately 430 acres of former tidal and brackish marsh on the Ni-les'tun Unit (also known as the Philpot Ranch), which borders the Coquille River and historically comprised much of the lower Coquille River estuary. The Unit consists of former marine-sourced tidal fringe wetlands encompassing the lower reaches of Fahy, Overlook, and Redd creeks. Native habitats within the Unit were diked, drained and converted to pasture for agricultural use beginning in the late 1800's. Approximately 15 miles of drainage ditches and over 1.5 miles of dike have been constructed on the Unit, and three tidegates currently impede connectivity of three salmonid-bearing streams with the lower Coquille River. Salmonids observed using the Unit include multiple age classes of coastal cutthroat trout and juvenile coho salmon, steelhead, and Chinook salmon. Coastal cutthroat trout and coho salmon may spawn in two of the streams.

The short-term conservation need is to restore natural hydrologic exchange and unrestricted fish access between the Coquille River and the Ni-les'tun Unit. The long-term need is to improve the quantity and quality of estuarine habitats in the lower Coquille River, which provide foraging and rearing habitats for native trout and other salmonids. The proposed restoration will nearly triple the tidal fringe habitat available to native trout and other

salmonids in the lower Coquille River estuary.

Specific work items performed for MasTec:

- Engineering design of full tidal restoration of site, including sub-contract to Siletz tribe to design construction of tidal swales and channels.
- Environmental permitting of full restoration project.
- Preliminary restoration activities, including site preparation, discing of shallow drainage ditches, and excavation of tidal channels.

Project Funding:

MasTec, Inc. (\$100,000 – cash contribution)